IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5486 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MRS.RANJAN ODEDRA

Versus

BIRLA SAGAR HIGHER SECONDARY SCHOOL & ANR.

Appearance:

1. Special Civil Application No. 5486 of 2002

MR AM RAVAL for Petitioner No. 1

NANAVATI ASSOCIATES for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 12/11/2003

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner is a primary school teacher. She was appointed as such in the primary section of the respondent No.1 - School. Her service came to be terminated on 15th May, 2002. Feeling aggrieved, she has preferred the present petition.

It is the claim of the petitioner that the respondent No.1 - School is affiliated to the Central Board of Secondary Education and, therefore, the Primary Education Tribunal established under the Bombay Primary Education Act, 1947 (hereinafter referred to as 'the Act') shall have no jurisdiction to entertain and decide the dispute between the petitioner and the respondent No.1.

Mr.Raval has submitted that there cannot be affiliation to two Boards and unless the School is affiliated to the Gujarat State Secondary Education Board the Tribunal shall have no jurisdiction. Besides, the respondent No.1 - School is not recognised and, therefore also, the Tribunal shall have no jurisdiction.

I am unable to agree with Mr.Raval. Section 2(17) of the Act defines "Primary School" to mean "a school or a part of a School in which primary education upto any standard is imparted". Section 2(18A) of the Act defines "Private primary school" to mean "a private primary school which is not maintained by the State Government or by a School Board or by an authorised municipality". Sub-section (1) of Section 40A of the Act imposes prohibition against imparting primary education by private primary schools without recognition. Sub-section (3) thereof provides, inter alia, that every private primary school which on the commencement of the Bombay Primary Education (Gujarat Amendment) Act, 1986 shall be deemed to have been recognised under the said section from the date of such commencement and shall continue to be so recognised until such recognition is withdrawn under sub-section (7) thereof. Section 40E of the Act provides that where there is any dispute between the manager of a recognised private primary school and teacher in service of such school, which is connected with the conditions of service of such teacher, the manager or the teacher may make an application to the Tribunal for decision of the dispute. Sub-section (1) of Section 40F of the Act provides for establishment of the Tribunal. Sub-section (4) thereof enjoins upon such tribunal to entertain and decide disputes of the nature referred to in Section 40E.

Neither of the aforesaid provisions refer to affiliation of a primary school. Hence, affiliation of a school to one Board or the another is not relevant in so far as the jurisdiction of the Tribunal established under Section 40F of the Act is concerned. The contention that the respondent No.1 - School is not recognised as envisaged under the Act is also, in view of Section 40A of the Act, not acceptable. Thus, in my view, the respondent No.1 - School being a recognised private primary school the Tribunal established under Section 40F of the Act shall have jurisdiction to entertain and decide the dispute raised by the petitioner herein.

In view of the alternative statutory remedy available to the petitioner the present petition under Article 226 of the Constitution of India need not be entertained. The petition is accordingly disposed of. Rule is discharged. There shall be no order as to cost.

It is clarified that in case the Tribunal refuses to entertain or decide the dispute raised by the petitioner on the ground the Tribunal has no jurisdiction, the petitioner shall have liberty to revive this petition.

(Ms. R.M.Doshit, J.)

/sakkaf